

FIRST AMENDMENT TO AGREEMENT

WHEREAS, the CITY OF MURFREESBORO ("City") and _____

WHEREAS, the City and Developer now desire to amend said Agreement:

NOW, THEREFORE, be it agreed by City and Developer that:

1. The Developer acknowledges the water and sewer line improvements may not conform to the Standard Water and Sewer Specifications in regards to backfill and compaction. In lieu of conforming to the backfill compaction in the Standard Water and Sewer Specifications for the work completed under this Contract and Agreement, the Developer agrees to extend the maintenance warranty period from twelve (12) months to thirty-six (36) months. The warranty period shall commence at the time the City Engineer gives written acceptance of all public improvements as being completed.
2. The Developer shall make or cause to be made, all repairs or replacement made necessary by settlement within thirty (30) days after receipt of written notice from the City. Repairs and/or replacement shall meet the most current version of the technical specifications for street repairs due to settlement over utility lines.

In the event of a street failure or trench settlement, the Developer shall be responsible for an additional three (3) year warranty period from the time the City gives written acceptance of the repairs.

3. This First Amendment shall take effect from and after its execution by all parties.

DEVELOPER _____

Date _____

Date _____

Date _____

Date _____

CITY OF MURFREESBORO

BY: _____

Date _____

ITS: _____

Approved as to form:

Susan Emery McGannon
Susan Emery McGannon, City Attorney

CONTRACT

THIS CONTRACT AND AGREEMENT, made and entered into on this the _____ day of _____, _____, by and between THE CITY OF MURFREESBORO, Tennessee, a municipal Corporation, located in Rutherford County, Tennessee, hereinafter referred to as "CITY", and _____, with its principle place of business at _____, City of _____, State of _____, hereinafter referred to as "DEVELOPER".

W I T N E S S E T H:

FOR AND IN CONSIDERATION of the mutual benefits accruing to each party hereinafter set forth, and ONE DOLLAR (\$1.00) cash in hand paid, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Upon request of Developer, the Murfreesboro Water and Sewer Department, hereinafter "Department", will consider plans for the installation of mainline water and/or sanitary sewer to serve _____, hereinafter "Development".

2. The Developer will be responsible for the hiring of a qualified civil engineering consultant licensed in the State of Tennessee for the purpose of designing the water and sanitary sewer mainlines. Plans and specifications conforming to local codes, and the latest editions of the Murfreesboro Water & Sewer Department Design Criteria and Standards, State of Tennessee Community Public Water Systems Design Criteria and Design Criteria for Sewage Works shall be prepared by the Developer's consultants. The scope of work shall include the design of said improvements. Design shall include engineering reports, preliminary surveys, water and/or sewer line plans, sewer line profiles, detail sheets, project specifications, hydraulic calculations and preparation of cost estimates. The Developer shall coordinate all water and/or sewer design with the Department Engineer, and submit the design for review and approval to the Department Engineer allowing at least two weeks review time for approval. All permits from other governmental agencies and utilities are the responsibility of the Developer.

Cost Estimates based on completed water and/or sewer plans and any Department cost shall be used to establish the construction cost portion of the letter of credit, bond, certificate of deposit or cash required by Department Policy and Procedures.

The Department reserves the right to designate, for the purpose of dedication to the City, water and/or sewer lines as public for operation and maintenance by the Department. In the event that the project is within the boundaries of Consolidated Utility District, hereinafter "CUD", the Developer shall coordinate all water line design and installation with CUD. If the project is within the limits of CUD, the Developer must submit to this Department acceptable water line designs on an approved scale, with State of Tennessee approvals, prior to this Department approving any sewer line designs.

The obtaining of bids and award of contract will be the responsibility of the Developer.

The Developer's engineering consultant shall provide survey layout of the water and/or sewer lines which includes the field location of an appropriate benchmark(s), location of sewer manholes, preparation of sewer line cut sheets and water line location alignments. The Department shall approve the layout, cut sheets and line locations prior to construction beginning.

Resident inspection shall be provided by this Department for both water and sewer to ensure compliance with the final plans and specifications and the verification of the quantity of materials installed. Compensation for resident inspection shall be based on actual footage of water and/or sewer lines installed at a unit charge as established in Exhibit "A". Preparation, verification, approval and payment of periodic payment requests by the Contractor shall be the sole responsibility of the Developer or representative.

The Developer shall provide the Department detailed site plans, road plans and profiles, storm drains and other utilities including water and sewer. The Developer shall inform the Department of any changes to the plans after submittal for water and sewer design, and any field changes which would affect the design.

There may be a need for the preparation of easement descriptions for water and/or sewer lines. This will be accomplished by the Developer providing the Department with legal descriptions for easement documents or providing the Department appropriate

easement via the plat.

The final easement documents shall be prepared by the City Attorney from easement descriptions provided by the Developer or prepared by the Department at the request and expense of the Developer.

3. The City will charge the Developer for the review of construction plans and inspection in accordance with the Water and Sewer Development Policy adopted 1998, as amended, attached hereto as Exhibit “A” and incorporated herein. The City will charge the Developer for the installation of the water service lines installed by the City in accordance with standard charges for similar work customarily charged Developers.

4. All connections of the new construction with existing water and sanitary sewer lines may be performed by the City at the option of the City.

5. The Developer shall be responsible for construction of water and sanitary sewer lines in conformity with plans and specifications submitted to and approved by the City. The City will not accept or connect water and sewer lines which do not meet all requirements.

6. In order to secure the performance of the Developer’s obligation under this agreement and the ordinances, codes, Standard Water and Sewer Specifications, and other regulations of the City, the Developer and the Department agree that the total estimated cost of construction is \$_____, which represents the total estimated costs of constructions for required water and/or sewer improvements on said development. If the Developer wishes the final plat executed prior to the completion of the water and/or sewer improvements for said development, security in the form of an irrevocable letter of credit, certificate of deposit issued by a Tennessee financial institution described in T.C.A. 12-4-108 (i), cash deposit, or performance and payment bond issued by an insurance company licensed in Tennessee shall be provided to the City. The amount of the security to be provided by the Developer shall be determined as a percentage of the water and sewer lines remaining to be completed in accordance with the inspector’s project quantity records. The security shall remain in force through the completion of the work and shall extend for a period of twelve (12) months after the completion of the work, except that the City may release a portion of the letter of credit, certificate of deposit, cash deposit, or performance and payment bond during the twelve

(12) month maintenance warranty period which shall commence at the time the City gives written acceptance of the improvements as being complete according to the plans and in conformity with the ordinance, codes, Standard Water and Sewer Specifications, and other regulations of the City; provided however, that the security retained for such warranty period shall in no event be less than ten percent (10%) of the total cost of construction of the proposed improvements for the development, or a minimum of \$3,000.00. The Director of the Department is authorized to reduce the amount of the Letter of Credit below the aforementioned minimum in his/her sole discretion on items of little value.

7. The Developer shall be responsible for maintenance and upkeep of the water and sewer lines constructed for a period of one (1) full year following the date of acceptance, said maintenance and warranty to include, but not be limited to, adjustment of manhole frames and covers, fire hydrants, and valve boxes. In the event of a problem requiring correction during the warranty period, or any extension thereof, the Developer's warranty period for the correction may be extended for one year from reinspection approval by the City following correction.

8. The City shall require prepayment of estimated costs for labor and materials performed by the City.

9. The Developer understands that charges and expenses set forth herein do not include charges for permits and fees required by the City code.

10. The Developer agrees to provide liability insurance or require the Contractor to provide liability insurance in the minimum amount of \$1,000,000 single limits, which names the Developer, City and Contractor as insureds. In addition, the Developer agrees to hold the City harmless and indemnify the City for all claims of loss associated with construction by the Developer. The insurance policy shall require a minimum of thirty (30) days written notice to the City prior to cancellation.

The Developer shall deliver proof of insurance prior to any construction. In the event the Developer fails to do so, the City may, following fifteen (15) days prior written notice to Developer, purchase the necessary insurance and charge same to the Developer together with an interest rate/service charge fee of 20% per annum.

11. In the event of default by Developer, Developer agrees to pay reasonable

attorney's fees and court costs associated with enforcement of this agreement.

12. Upon completion of construction and prior to acceptance, the Developer will submit a sworn statement of actual costs of labor and materials required for construction excluding sums previously billed through the Department. The City will supply the Developer with a form for this purpose.

13. In the event any construction is to be performed within existing public right-of-way of the City, Developer agrees to notify the Department prior to the commencement of said work in the public right-of-way, and to obtain all necessary approvals and permits from all City departments.

Developer further agrees to properly mark the construction area with barriers, barricades, fences, guards and flagmen as required by the Manual on Uniform Traffic Control Devices, Part 6 ("MUTCD"), in order to minimize the danger to the public. Developer agrees that in streets which are not barricaded to block all traffic, to place and maintain a drum type barricade as described in MUTCD, stabilized with sand bags on each manhole cover and/or casting which extends more than two (2) inches above the existing street surface. Without limiting Developer's obligation to conform with all provisions of MUTCD, Developer agrees to place and maintain signs as provided in subsection 6B.

14. Developer further agrees to maintain erosion barriers and to take other steps to prevent the erosion and tracking of materials from the site onto adjoining parcels, streams and public right-of-way.

15. In the event Developer fails to properly construct the improvements required by the plans incorporated herein and approved by the Department, during the warranty period Developer shall continue to be responsible for corrective work, notwithstanding the City overlooked such defects prior to its acceptance of the development.

16. Any notification required under this agreement shall be directed as follows:

Bobby Worthington, PE
220 N.W. Broad Street
P.O. Box 1477
Murfreesboro, TN 37133-1477
Phone: 615/848-3200
Fax: 615/848-3206

Developer:

17. The applicable ordinances, codes, policies, Standard Street Specifications, Standard Water and Sewer Specifications and other regulations of the City of Murfreesboro and the Department are incorporated herein by reference, and Developer agrees to abide by same.

18. This instrument constitutes the entire agreement of the parties, and it shall not be amended except in writing acknowledged by authorized agents or representatives of each of the parties.

19. This agreement shall be binding upon the parties hereto, their heirs, successors and assigns. The laws of Tennessee shall be applicable and venue shall be Rutherford County, Tennessee for any disputes.

This agreement made and entered into in duplicate on the day and date first above written.

CITY OF MURFREESBORO

DEVELOPER

NOTE: Attached Water and Sewer Development Policy adopted 1998.

EXHIBIT “A”

WATER AND SEWER DEVELOPMENT POLICY

1. The Developer first contacts the Murfreesboro Water and Sewer Department to check the availability of water and sewer service.
2. If water and sewer are available, the Developer then submits a general layout of the proposed development. This also includes any specific requirements for water and sewer.
3. The next step is for the Developer to choose a civil engineering consultant licensed in the State of Tennessee to design detailed water and sewer plans. This includes a master plan of the water and sewer for the entire development. NOTE: The consulting Engineer for CUD designs water lines for projects in CUD’s territory.

The minimum design guidelines that are to be provided by consultants are described in detail in Exhibit “B”.

4. Upon completion of the plans and specifications, the Department or its representative, will then review the construction cost estimate provided by the consulting engineer and prepare a total estimate of the water and sewer construction cost. The sum total of the estimate includes the cost of water service lines installed by the Department, cost of connections to the existing systems made by the Department, review and inspection fees, and any other expenses reasonably necessary for providing a complete water and sewer system. This total shall determine the amount of the bond, letter of credit or cash deposit, hereinafter “security”, that will be required of the Developer prior to the approval of the plat for the proposed project.

The Development Contract and Surety Agreement shall require completion of the construction within one (1) year. In addition, security in an amount of not less than 10% of the original estimated water and sewer construction cost or a minimum of \$3,000.00, whichever is greater, shall remain in full force and in effect for one (1) year following completion to serve as warranty for proper construction.

In the event the Developer requests the Department to execute the plat prior to the project completion, the Developer shall furnish the Department with (a) Lien Waivers from all material suppliers, (b) Security for the remaining uncompleted estimated construction cost as determined by the Department based on the original estimated cost of construction times the percentage of completion. There is no right to receive this certification which shall be in the sole discretion of the Director of the Department.

5. After submission of a construction project value for the Developer and all other applicable requirements in Exhibit “B”, and execution of a development contract with the Department, the Developer’s project shall be approved by an authorized representative of the Department.
6. The Department will charge the Developer the current review fee rates charged by the State of Tennessee for both water and sewer review and approval. Additionally, force mains and miscellaneous wastewater work will have fees consistent with water lines and miscellaneous review. Excerpts from the approved State Rule are Attachments 1 and 2.
7. The Department will charge the Developer a resident inspection fee of \$1.00 per linear foot based on actual footage of water and/or sewer lines installed. The

Department will perform video inspections of sewer lines prior to warranty expiration. The Department will charge the Developer \$1.00 per linear foot based on actual footage of sewer lines video inspected. If the sewer lines being inspected require cleaning prior to the video inspection, jet wash truck services by the Department may be utilized at a charge to the Developer of \$150.00 per hour, one hour minimum charge and the cost of water used. These charges will apply for all jet wash truck services.

8. The Developer will then be free to negotiate a contract using their approved plans and specifications with any Contractor that meet the minimum requirements of State license and insurance. Negotiations and payment for this work will be between the Developer and the Contractor, subject to the insurance, Material Lien Waiver and Security requirements.

However, should a project be eligible for participation by the City due to upsizing of a water or sewer line, the Department reserves the right to publicly bid the project or the portion of the project eligible for participation. Participation in the cost to upsize water and/or sewer lines shall be in accordance with established policies in effect. The City has a schedule of upsize participation, which the Developer may accept in lieu of publicly bidding, subject to approval of the Water and Sewer Board.

Should the Department participate in serving a development with a larger line according to the City's Master Plan and the project is to be publicly bid, then the Developer shall deposit with the Department security in the amount of the Developer's portion of the estimated construction cost pursuant to the Development Policy Procedures. Security shall be deposited with the Department prior to the public bid opening. The Department shall invoice the Developer for periodic pay estimates to the Contractor as received.

9. Contractors must at all times meet the Department's requirements of State of Tennessee Classification MU – Municipal and Utility Construction license holder for water and sewer construction, insurance with a general liability of not less than \$1,000,000, and maintain proper equipment.
10. After the Developer has selected a Contractor, and receipt of Notice to Proceed from City Engineering, the Department will issue the official Notice to Proceed with mainline construction of water and sewer to the Contractor. Any construction work prior to the issuance of the Notice to Proceed will be at the Developer and Contractor's risk. A preconstruction conference may be scheduled upon issuance of the Notice to Proceed and before construction begins.
11. No water and sewer construction may be performed without a Notice to Proceed and a schedule of days the work is to be performed so the Department can place an inspector on the job. There may be some cases such as when the Contractor is drilling rock that the inspector and Department supervisor may determine that the inspector's presence is not required.
12. All water and sewer work must be installed in accordance with the Department's specifications and requirements. It is the Developer's responsibility to insure that the Contractor complies with these requirements.
13. The inspector will attempt to see that materials and installation meet the Department's requirements; but will not be responsible for any measurement and payment items as this is strictly between the Developer and Contractor. The inspector will also collect any data necessary for the Department's records. The City shall not be responsible to Developer or third parties for defective workmanship of Contractors.
14. The Department will not perform any work associated with the Developer's project without full payment in advance. This includes such items as water service line installations and system connections.

- 15. The Department will not sign a Developer’s plat until such time the development meets all the requirements of the Department’s Development Policy Procedures.

EXHIBIT “B”

ENGINEERING GUIDELINES
FOR WATER AND SEWER DESIGN

- 1. The Developer shall submit a water and sewer master plan of the complete development. This shall be at a scale of no greater than 1” = 100’.
- 2. The minimum design criteria for water and sewer are Tennessee Department of Environment and Conservation’s (TDEC) current “Community Public Water Systems Design Criteria” and “Design Criteria for Sewage Works”, and “Murfreesboro Water and Sewer Department Water Distribution System Criteria”. Exceptions to TDEC “Design Criteria for Sewage Works” are as follows:

| <u>Sewer Size (inches)</u> | <u>Minimum Slope (feet per 100 feet)</u> |
|--------------------------------|--|
| 8 | 0.40 |
| 10 | 0.28 |
| 12 | 0.22 |
| 14 | 0.17 |
| 15 | 0.15 |
| 16 | 0.14 |
| 18 | 0.12 |
| 21 | 0.10 |
| 24 | 0.08 |
| 27 | 0.07 |
| 30 | 0.06 |
| 36 | 0.05 |

- 3. The Developer shall submit detailed water and sewer designs with a plan scale of no greater than 1” = 50’, and a vertical profile scale of no greater than 1” = 5’.

The design of said improvements shall include preliminary surveys, water and sewer line plans, sewer line profiles, hydraulic calculations, documents obtaining approval for state and local highway and street cut permits and all other permits required, and preparation of cost estimates.

Hydraulic calculations for the sanitary sewer design must be recorded on the spreadsheet provided and approved by Tennessee’s Department of Environment and Conservation. (Attachment A)

- 4. If the project is within the boundaries of Consolidated Utility District, hereinafter “CUD”, the Developer is responsible for coordination of water line design and installation with CUD. The Developer is responsible for submitting to this Department, acceptable plans, hydraulic calculations, a materials quantities list, and an engineer’s estimate of construction costs. CUD water designs must show the relationship between the water line and the proposed sanitary sewer. The water line design and installation must meet the minimum design criteria and specifications of the Department or that of CUD, whichever is greater.
- 5. The attached approval stamp (Attachment B) must appear on all of the project construction plans sheets. This is not a requirement for water design within CUD boundaries.
- 6. Department must have an executed Contract/Agreement with the Developer.

7. Complete plans submittal will only be considered plans adhering to Items 1 through 6, along with the submission of 2 sets of construction plans and the appropriate plans review fee.
8. Incomplete plans submittals will not be reviewed and returned to the Developer.

(Rule 1200-4-11-02, continued)

- (c) Plan Review Fees shall apply to new facilities as well as the expansion or modification of existing facilities. If the submittal includes more than one listed category, the fee will be the sum of the fees listed for each individual category. Review of plans documents will not commence until all fees required by these rules are paid in full. Plan Review Fees shall be as follows:

4. Collection Systems:

- (i) Collection Lines - \$25.00 per 250 feet or portion thereof of sewage collection line excluding service laterals. Total fee not to exceed \$1,500.

5. Equalization Basins:

- | | |
|---|--------|
| (i) Holding capacity equal to or greater than 5 million gallons (MG) | \$ 300 |
| (ii) Holding capacity equal to or greater than 1 MG and less than 5 MG | \$ 200 |
| (iii) Holding capacity equal to or greater than 0.075 MG and less than 1 MG | \$ 100 |
| (iv) Holding capacity less than 0.075 MG | \$ 50 |

6. Pumping Stations:

- | | |
|--|--------|
| (i) Design capacity equal to or greater than 5 MGD | \$ 300 |
| (ii) Design capacity equal to or greater than 1 MGD and less than 5 MGD | \$ 200 |
| (iii) Design capacity equal to or greater than 0.075 MGD and less than 1 MGD | \$ 100 |
| (iv) Design capacity less than 0.075 MGD | \$ 50 |

ATTACHMENT 1

(Rule 1200-5-1-.32, continued)

- (2) (a) Plans Review Fee - Beginning July 1, 1992, any person submitting non-transient non-community and community water system plans for approval shall be required to pay the fees listed in Parts 1. through 14. below for the purpose of plans review. The fees apply to new facilities as well as the expansion or modification of existing facilities. If the submittal includes multiple activities, the fee will be the sum of the fees listed for each individual activity. Approval of plan documents will not be granted until all fees required by Parts 1. through 14. below are paid in full. Units of local government which have been granted plans review authority in accordance with T.C.A. Section 68-13-706 shall pay an annual fee of \$1,000. Failure of local governments to pay this fee will be cause for the revocation of plans review authority.

| <u>Type Activity</u> | <u>Fee Schedule</u> |
|--|---------------------|
| 1. Well or Spring Development | \$ 200 |
| 2. Chemical Control Plant | \$ 400 |
| 3. Disinfection System | |
| (i) Gaseous | \$ 300 |
| (ii) Hypochlorinator | \$ 150 |
| 4. Filter Plant | \$ 750 |
| 5. Pump Station | \$ 250 |
| 6. Tank | \$ 225 |
| 7. Standard Specifications | \$ 100 |
| 8. Tank Coating | \$ 50 |
| 9. Sludge Treating | \$ 150 |
| 10. Distribution Lines | |
| (i) 0 to 1000 feet | \$ 50 |
| (ii) Greater than 1000 feet | \$ 100 + \$.01/ft |
| 11. Change Orders | \$ 50 |
| 12. Review of Operations and Maintenance Manuals | \$ 150 |
| 13. New raw water source and site evaluation for public water systems and water bottling operations. | \$ 300 |
| 14. Miscellaneous (Includes other items not specifically mentioned above). | \$ 50 |

- (b) The Department shall complete its review of plan documents within thirty days of the receipt of plans containing sufficient information to allow the Department to make the necessary determinations. Fees will not be refunded for projects that are not approved or that are withdrawn voluntarily by the applicant. Plans resubmitted within 30 days of an initial denial will be reviewed without additional fees provided the scope of the project has not changed.
- (c) Penalties and interest on late payments shall be computed as specified in subparagraph (1)(e) of 1200-5-1-.32. Appeals shall be perfected as specified in subparagraphs (1)(d) of 1200-5-1-.32.
- (d) There shall be no fee for line extensions of 500 feet or less.

Authority: T.C.A. §§4-5-201 et seq., 4-5-202, 68-1-1301 et seq., 68-13-701 et seq., 68-13-704, 68-203-101 et seq., 68-221-701 et seq., and 68-221-704. **Administrative History:** Original rule filed August 9, 1991; effective September 23, 1991. Amendment filed August 12, 1992; effective September 26, 1992. Amendment filed May 2, 1994; effective July 16, 1994. Amendment filed April 12, 1996; effective June 26, 1996. Amendment filed March 5, 2002; effective May 19, 2002.

ATTACHMENT 2

HYDRAULIC SEWER DESIGN

[illegible]

ATTACHMENT A

Developer's Initials _____

APPROVED FOR CONSTRUCTION

**THE DOCUMENT BEARING THIS STAMP HAS BEEN REVIEWED BY THE
MURFREESBORO WATER AND SEWER DEPARTMENT**

**UNDER THE AUTHORITY DELEGATED BY THE
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
DIVISION OF WATER SUPPLY**

AND IS HEREBY APPROVED FOR CONSTRUCTION.

**THIS APPROVAL SHALL NOT BE CONSTRUED AS CREATING A PRESUMPTION
OF CORRECT OPERATION OR AS WARRANTING BY THE MURFREESBORO
WATER AND SEWER DEPARTMENT THAT THE APPROVED FACILITIES
WILL REACH THE DESIGNED GOALS.**

**APPROVAL DATE _____
APPROVAL EXPIRES IN 12 MONTHS**

BY _____

ATTACHMENT B

Developer's Initials _____